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SAVE OUR FOREST ASSOCIATION, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

BLUETRITON BRANDS, INC.

Case No.: 2:24-cv-09720-JGB-DTB

Plaintiff,

DECLARATION OF HUGH BIALECKI

vs.
UNITED STATES FOREST SERVICE, *et al.*,

Date: January 13, 2025

Time: 9:00 a.m.

Courtroom: 1

Judge: Hon. Jesus G. Bernal

Action Filed: August 6, 2024

I, Hugh Bialecki, do declare and state:

1. If sworn as a witness, I could and would testify to my personal knowledge of the facts set forth herein.

2. I am the President of a volunteer 501(c)(3) organization, Save Our Forest Association, Inc. (“SOFA”), which is the largest grassroots environmental organization focused on maintaining the quality of life in the San Bernardino Mountains and preserving its natural resources. Since 1988 SOFA has worked with the US Forest Service, State of California, County

1 of San Bernardino and local agencies to shape environmental actions and land use decisions in our
2 local mountains.

3 3. SOFA has sued the Forest Service in the Central District of California, seeking to
4 stop the Forest Service from allowing the diversion of water from Strawberry Canyon and to begin
5 its restoration to meet USFS management plan goals.

6 4. SOFA has received personal reports of property owners in Twin Peaks, adjacent to
7 Strawberry Canyon, that their well outputs have diminished in the last several years--likely the
8 combination of water diversions from Strawberry Creek and the prolonged Southern California
9 drought conditions. Local hikers have experienced trails becoming impassable with chaparral
10 vegetation overgrowing parts of Strawberry Canyon that would have a more open landscape with
11 riparian habitat reestablished.

12 5. SOFA's position, as a result of consultation with retired Forest Service personnel
13 and literature review, is that a healthy, well-watered riparian areas is critical to fire suppression
14 and resource and community protection. We, the mountaintop communities sit right above
15 Strawberry Creek. The east-west orientation of Strawberry Creek offers significant fire protection
16 characteristic *if* the riparian area is lush and healthy. But, if Strawberry Creek is dewatered, the
17 literature, professional opinion, and local historical fires bear out the fact that fires will act as if the
18 riparian zone is all upland and roar right through. In 2003, the Old Fire burned up a dewatered
19 Strawberry Canyon to within a few feet of a critical communication network on Strawberry Peak,
20 nearly destroying infrastructure for Sheriffs, Fire Departments, California Highway Patrol and
21 others. A well-watered riparian area can slow the fire, allow for more timely and safer suppression
22 and help protect resources and residents.

1 6. As long ago as 2015, SOFA, along with our local Sierra Club and the Audubon
2 Society, attempted to organize a meeting with the Forest Supervisor and Nestlé/Arrowhead
3 Springs Water Company to discuss the then-long expired water withdrawal use permits in the San
4 Bernardino National Forest. Our concern was and is the continued water extraction and its
5 resultant ecological stress on streams and associated habitat in the face of chronic drought
6 conditions. In the very recent past San Bernardino has lost a *million* pine trees due to drought and
7 the western pine beetle has exploded with warmer winters and minimal snow/rainfall.

8 7. The most urgent concern with dewatering local groundwater supplies is Strawberry
9 Creek below the community of Rim Forest along Scenic Highway 18, and nearby Deep Creek, a
10 designated Wild and Scenic River. Both of these streams had historically been dewatered under
11 long expired permits, despite the needs of endangered species within their habitat (least Bell's
12 vireo, spotted owl, and southwestern willow flycatcher). We have repeatedly urged the Forest
13 Service to evaluate the condition of Strawberry Creek and Deep Creek to address deterioration of
14 habitat due to chronic water removal. We have been invited by the Forest Service to engage in
15 restoration efforts in Strawberry Canyon, which we welcome. Restoration of a riparian zone is
16 futile without water.

17 8. Between April 2021, and September 2023, SOFA actively participated in the
18 administrative hearing of the California State Water Resources Control Board ("SWRCB")
19 Administrative Hearing Office regarding the Cease and Desist Order issued to BlueTriton Brands
20 (Nestlé's successor in interest).

21 9. In February 2018, SOFA corresponded with the California State Water Resources
22 Control Board ("SWRCB") supporting the Report of Investigation, INV 8217 ("ROI"), in
23 response to numerous complaints regarding Nestlé water rights made between April, 2015, and
24

1 September, 2017. We supported the contention that “Nestle claimed several poorly defined bases
2 of right, but none of these claims are supported by evidence provided or found by Division staff.”

3 10. I am aware that the San Manuel Band of Mission Indians purchased all or a portion
4 of the property formerly owned by Campus Crusade for Christ, which includes the old Arrowhead
5 Hotel (“**Hotel Property**”), and that BlueTriton Brands (“**BTB**”) has for many years, and
6 apparently continues to deliver some portion of its water to the Hotel Property.

7 11. Attached as **Exhibit 1** is a February 10, 2022, letter from the San Manuel Band of
8 Mission Indians to Alan B. Lilly, Presiding Hearing Officer, Administrative Hearings Office, State
9 Water Resources Control Board, denying the request from the Hearing Officer for the Arrowhead
10 Springs Hotel property to be accessed for a site visit in 2022. The Chairman Kenneth Ramirez
11 wrote : “I appreciate your acknowledgement that the San Manuel Band of Mission Indians
12 (“Tribe”) is not a party to the ongoing proceedings, neither is it subject to the jurisdiction of the
13 SWRCB, nor is it subject to any order the SWRCB Board may adopt.”

14 12. I have led, and been a party to, numerous hikes inspecting the headwaters of
15 Strawberry Creek and the BlueTriton Brands water diversion infrastructure at sites 1, 2, 3, 7, 8, 10,
16 11, and 12, including the SWRCB site visit on February 16-17, 2022, and most recently on
17 December 11, 2024. Strawberry Canyon continues to this day in a severely dewatered state posing
18 a serious wildfire risk to the mountain communities, as occurred during the Old Fire in 2003.
19 Restoring the natural flow of the springs of Strawberry Creek would rewater the canyon, reducing
20 fire risk to the mountain communities and to the Arrowhead Springs Hotel Property owned by the
21 Yuhaaviatam of San Manuel Nation since 2016. Restoring Strawberry Creek by terminating all
22 existing water diversions through the BlueTriton Brands infrastructure will likely also increase

1 groundwater levels at the adjacent Arrowhead Springs property and improve the productivity of
2 the seven groundwater wells located there.

3 13. The Local Agency Formation Commission (LAFCO) of the County of San
4 Bernardino Resolution 2942, dated November 18, 2009, a true and correct copy of which is
5 attached hereto as **Exhibit 2**, made determinations on LAFCO 3050 and approved the annexation
6 of the approximately 1,590 acres of the Arrowhead Springs Hotel and its surrounding area into the
7 City of San Bernardino. The City of San Bernardino Municipal Water Department, the Campus
8 Crusade for Christ, Inc., and Arrowhead Springs Corporation in August 2009 entered into an
9 Agreement in Principle regarding the future delivery of domestic, irrigation and recycled water
10 and wastewater service to the property now owned by the Tribe. The San Bernardino County Fire
11 Protection District was also detached and subsequent fire protection provided by the City of San
12 Bernardino upon successful completion of this reorganization. I obtained Exhibit 2, as well as
13 other LAFCO documents attached as exhibits to the Declaration of Rachel Doughty, filed
14 herewith, from Rebecca Lowery, San Bernardino LAFCO, on November 15, 2024, in response to
15 a California Public Records Act Request made by Anthony Serrano.

16 14. LAFCO completed a Certificate of Completion of the City of San Bernardino
17 annexation of the subject property on February 11, 2010, which is attached to the Doughty
18 Declaration filed herewith as Exhibit 1. There is no mention in the plans to develop the Arrowhead
19 Hotel Property of reliance on any water supplied to the Arrowhead Springs Hotel Property from
20 the San Bernardino National Forest, East Twin Creek, or Strawberry Creek.

21 15. The Tribe acquired the Arrowhead Springs Hotel Property in 2016, so eight years
22 has elapsed during which the Tribe could have sought connection to City of San Bernardino
23 municipal water supply approximately 6,000 feet from their property line. (ECF 65-5, p. 18)

1 16. The Cease and Desist Order WR 2023-0042 adopted on September 19, 2023, by the
2 SWRCB to BlueTriton Brands Inc. clearly communicated to all interested parties that any
3 expectation of continued reliance upon water from Strawberry Canyon was tenuous.

4 17. The December 11, 2023, Letter to Chairwoman Lynn R. Valbuena, San Manuel
5 Band of Mission Indians, titled “Letter Agreement Amending 80/20 Agreement during Interim
6 Period” (ECF 65-8) clearly outlines the anticipated circumstances that would impact water
7 diverted from the springs in Strawberry Canyon to the Tribe.” However, the Proposed Complaint-
8 In-Intervention, Case No. 2:24-cv-09720-JGB-DTB makes no mention of this communication to
9 the Tribe from Blue Triton Brands Inc. fully seven months prior to the Notice of Denial on July
10 27, 2024.

11 18. The Tribe has had significant time since their acquisition of the Arrowhead
12 Springs Hotel Property in 2016 (and likely awareness of the 2010 certification of annexation by
13 the City of San Bernardino which defined the delivery of domestic, irrigation and recycled water
14 and wastewater) to plan and execute the connection to municipal water supply and wean
15 Arrowhead Springs from their historic reliance on water diversions from Strawberry Canyon. The
16 timing of the Notice of Denial and cessation of water Diversions to the Arrowhead Springs is not a
17 sudden action by the USFS without years of communication by the SWRCB, Nestlé Waters of
18 North America, and now BlueTriton Brands.

19 19. Attached hereto as **Exhibit 3** is a true and correct copy of the extraction recordation
20 for the Arrowhead Drinking Water Company for 2023. This was obtained from Sayer Pinto,
21 Principal Water Resources Analyst at the San Bernardino Valley Municipal Water District
22 (“SBVMWD”). It shows a total of 319 Acre Feet (approximately 100 million gallons) in that year.

1 Prior years' extractions are shown in Exhibit 4, also obtained from the SBVMWD, ranging
2 between 2016 and 2021 from 102 to 211 Acre Feet (33 million gallons to 69 million gallons).

3 **20.** Because the owner of the Hotel Property was entitled by contract to 20% of the
4 water reported extracted, this amount to the following:

Year	Acre Feet Extracted	20% (in Acre Feet)
2016	102	20.4
2017	144	28.8
2018	141	28.2
2019	211	42.2
2020	180	36
2021	143	28.6
2023	319	63.8

14 **21.** And in April 2024, BTB reported deliveries to the Tribe of 8,053,633 gallons for
15 April alone. This number was received in a well report received from the USFS in response to a
16 FOIA request.

17 **22.** The Tribe seems to have options to replace the water obtained from BTB. It fully
18 owns Del Rosa Mutual Water Company, the wells of which produced 1,900 acre feet in 2019.
19 (Exhibit 3 to Doughty Declaration).

20 **23.** On January 10, 2025, I spoke with SBVMD Gen Manager Heather Dyer by phone
21 regarding short term solution to the stated need by the SMBMI Tribe for water delivery to the
22 ASH property. Ms. Dyer advised that the SBVMWD staff has reviewed the plan for an above
23 ground water pipeline to deliver State Water Project untreated water to the Arrowhead Springs
24

1 property as a “simple temporary solution” that is “very do-able,” with an estimated time frame of
2 less than six months to complete at an approximate cost of under \$500,000. This above ground
3 temporary pipeline would be durable enough to provide untreated water for multiple years while
4 the Tribe is working on the connection to the City of San Bernardino municipal water supply.
5 SBVMWD would be able to provide the preliminary estimated need of approximately 100 acre-
6 feed to the Arrowhead Springs property. Untreated non-potable water could immediately be used
7 for irrigation and fire suppression while a portable water treatment system on-site could provide
8 for drinking water.

9 24. SOFA supports the July 27, 2024, BTB SUP denial by the USFS, and objects to
10 any further extensions of the January 15, 2025, termination of water diversions. SOFA looks
11 forward to the restoration of Strawberry Canyon in the SBNF.

12 25. It is SOFA’s position that the Complaint-In Intervention of Plaintiff-Intervenor
13 Yuhaaviatam of San Manuel Nation for Declaratory and Injunctive relief dated January 3, 2025,
14 should be denied and the Notice of Denial dated July 27, 2024, by the USFS should be upheld.

15 26. Thank you for this opportunity to address the Court with our amicus brief
16 supporting the action of the US Forest Service restoring the springs of Strawberry Canyon,
17 decreasing the risk of wildfire to the Arrowhead Springs Hotel property by “greening” Strawberry
18 Canyon with natural water flows and respecting the ancestral lands of the Yuhaaviatam of San
19 Manuel Nation.

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1 I make this declaration under penalty of perjury under the laws of the United States of
2 America, executed this 10th day of January, 2025, in Santa Cruz, California.
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By: */s/ Hugh Bialecki*

5 **HUGH BIALECKI**

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7 In lieu of a signature, I attest that I obtained approval, on January 10, 2025, from Hugh
Bialecki for the filing of this declaration.
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9 */s/ Rachel Doughty*

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